
**Minutes
Tempe Police Public Safety Personnel
Retirement System Board
June 2, 2016**

Minutes of the Tempe Police Public Safety Personnel Retirement System Board, held on Thursday, June 2, 2016, 2:00 p.m., at Tempe City Hall, Third Floor Conference Room, 31 E. 5th Street, Tempe, Arizona.

Board Members Present:

Bill Munch
Kelley McMenemy
Jeff Millen

Board Members Absent:

Mark Mitchell, Mayor
Joe Brosius

City Staff Present:

Renie Broderick, Internal Services Director
Suzanne Olson, Employee Benefits Manager
Tammy Milhon, HR Specialist
Susan Buck, Executive Assistant

Legal Counsel Present:

Cynthia Kelley

Jeff Millen called the meeting to order at 2:00 p.m.

ITEM I - Consideration of Meeting Minutes

Motion by Kelly McMenemy to approve the May 5, 2016 Board Meeting Minutes; second by Bill Munch. Motion passed on a voice vote 3-0.

ITEM II - Public Appearances

There were no public appearances.

ITEM III - Motion to Adjourn to Executive Session

No executive session was held.

ITEM IV – New Member

Motion by Kelly McMenemy to approve the New Member application of **Lindsey Fernandez**, noting that question #43 on the medical questionnaire completed by the applicant was not answered, however there were no pre-existing conditions listed on the pre-employment medical examination report completed by the reviewing physician; second by Bill Munch. Motion passed on a voice vote 3-0.

ITEM V – Prior Service / Transfer of Service

The Board acknowledged the prior service / transfer of service of **Eleuterio G. Fragoso** of 4.6550 years of military service, for a total prior service of 5.0410 years.

ITEM VI – Retirement Application(s)

Motion by Kelley McMenemy to approve the application by **Jeff A. McHenry** for Normal Retirement, with a retirement date of May 13, 2016; second by Bill Munch. Motion passed on a voice vote 3-0.

Motion by Kelly McMenemy to approve the application of **Renee L. Page** for Retirement from the Deferred Retirement Option Plan (DROP) Program, with a retirement date of June 23, 2016; second by Bill Munch. Motion passed on a voice vote 3-0.

ITEM VII – Re-Hearing for Accidental Disability Benefits

Local Board Secretary Renie Broderick provided a summary of actions to date on the application by William R. Vanek for Accidental Disability Benefits. The initial hearing was held on November 5, 2015. While the IME results were pending, Mr. Vanek retired from DROP effective January 1, 2016 (with a last day worked of December 31, 2015). The IME report was received and a hearing was held on January 7, 2016, during which the Board requested that staff obtain clarification of the IME report provided by Dr. Kipling Sharpe. Dr. Sharpe's clarification was received and the hearing was continued on February 4, 2016, during which the Board denied Mr. Vanek's application. Mr. Vanek requested a re-hearing, which was held on April 7, 2016, at which the Board approved him for a second IME. The second IME report, provided by Dr. Michael A. Steingart, has been distributed to the Board for their review. Ms. Broderick noted that Mr. Vanek and his attorney had previously addressed the Board and expressed concerns about Dr. Kipling Sharpe, the doctor who performed the first IME.

Motion by Kelly McMenemy to approve the application for Accidental Disability Benefits of **William R. Vanek** based on the IME report provided by Dr. Michael A. Steingart; second by Bill Munch. Motion passed on a voice vote 3-0.

Boardmember McMenemy read into the record the following questions from the Accidental Disability Questionnaire, Form P5-LB-A, along with the Board responses:

1. Did the employee file the application after the disability incident, or within one year of ceasing to be an employee? **YES**
2. Did (or will) the employee terminate by a reason of disability? **NO Please see the explanation in #4 below.**
3. Did employment terminate based on a disciplinary issue? **NO**
4. If the member's period of DROP has ended, if applicable, did (or will) the employee terminate by a reason of disability? **YES** Board Legal Counsel Cynthia Kelley requested that it be noted for the record that Mr. Vanek filed for accidental disability benefits, but subsequently retired from the City *due to the end of his DROP period*. HR Specialist Tammy Milhon stated that Mr. Vanek's last day of employment was December 31, 2015. Ms. Kelley noted that the processing of Mr. Vanek's application for Accidental Disability Benefits began *before* his retirement from DROP became effective and his disability application has been in continuous process since he filed for it in November 2015. The Board generally discussed the questions on the Form P5-LB-A.
5. Is the employee still working a position within their job classification that the Local Board considers a reasonable range of duties position? **NO**
6. Has the employee refused a position within their job classification that the Local Board considered a reasonable range of duties? **NO**
7. Did the injury or condition occur prior to the current PSPRS membership date? **NO**
8. Was the injury or condition the result of an event incurred during the performance of the employee's duty? **YES**

ITEM VIII – Survivor's Benefits

Motion by Kelly McMenemy to approve the application of **Joan Scheffner**, surviving spouse of Kenneth M. Scheffner for Survivor's Benefits; second by Bill Munch. Motion passed on a voice vote 3-0.

The Board generally discussed the processing and effective date of survivor's benefits.

ITEM IX – State Administrator Letter Regarding Compensation (discussion only; no action taken)

Boardmember McMenemy stated that this item is a response from the State Administrator to a letter regarding third party overtime sent to the Chair of the PSPRS State Board of Trustees by member **Christian Phillips**. Boardmember McMenemy stated that the State seems to say that while they do not have authority to take action in this case, they believe that the work in question meets the definition of compensation and is therefore pensionable. Ms. Kelley read

Arizona Revised Statute (ARS) sections 38-847.D and 38-847.E aloud and stated her opinion that the Local Board has the legal responsibility to determine if the third-party overtime is pensionable compensation. Ms. Kelley stated that key aspects are *supervision* and *what type of off-duty work is being done*. Boardmember McMenemy asked if the Local Board and the City should discuss this situation. Boardmember Millen stated that ultimately it would be good for the City to discuss the situation directly with Mr. Phillips. The Board discussed the letter and the state statutes in general. Boardmember McMenemy read aloud excerpts from ARS 38-842.12 defining compensation and noted that the "third party contracts between public agencies" would apply to ASU and the schools. The Board discussed the definition of compensation in general.

Dale Norris, Legal Counsel for Mr. Phillips, addressed the Board. Mr. Norris noted that he disagrees with the Board's Legal Counsel, Ms. Kelly, in that he does not believe that the Local Board has the authority to direct the City to do anything on this issue. Mr. Norris stated that the authority lies with the State Board, as they have the responsibility to collect all required contributions from the employer and the employer has the obligation to collect contributions from the employee and forward it to the system. If that does not happen, then Mr. Phillips or another member could sue the pension system to force them to do it or could sue the City of Tempe to make them follow the law. Mr. Norris stated it would be a good suggestion for the City to sit down to have a discussion with Mr. Phillips. There is a potential for penalties and also retroactive correction pertaining to overtime already paid that could result in recouping pay from members.

Boardmember Millen suggested that this item be tabled until the next meeting. All boardmembers present agreed that this item should be a future agenda item at the next meeting for further review to see if any action is needed. Boardmember Millen suggested that the City meet with Mr. Phillips to discuss this issue previous to the Local Board being involved.

ITEM X - Future Meeting Date

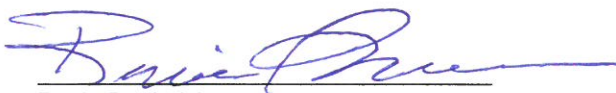
The next meeting is July 7, 2016. Boardmember Millen stated that he will not be able to physically attend the July meeting, but may be available to attend via telephone.

ITEM IX - Future Agenda Items

- Benefit Calculation Examples
- Quarterly Review of Board Expenditures

Adjournment

Motion to adjourn by Kelly McMenemy; second by Bill Munch. Motion passed unanimously on a voice vote 3-0. The meeting adjourned at 2:31 p.m.



Renie Broderick
Local Board Secretary